

CAMPAIGN SPENDING COMMISSION

STATE OF HAWAII

In Re the Matter of)	CA 10-16
)	
)	
Tercia Ku,)	
Tercia Ku Campaign Committee)	
)	
Respondents.)	
_____)	

CONCILIATION AGREEMENT

Barbara U. Wong, Executive Director for the Campaign Spending Commission ("Commission"), initiated an investigation of Tercia Ku ("Ku") and Tercia Ku Campaign Committee ("Committee") or jointly "Respondents." A complaint was filed, Docket No. 08-08, pursuant to section 11-216, Hawaii Revised Statutes ("HRS") in November, 2008 against the Respondents. Since the filing of the complaint, Wong and the Respondents have attempted to resolve the matters raised in the complaint as well as new matters.

NOW, THEREFORE, Respondents and the Commission enter into this Conciliation Agreement ("Agreement") pursuant to section section 11-FFF of Act 211 on the terms and conditions set forth below:

- I. The Commission has jurisdiction over Respondents and the subject matter of this administrative action.
- II. Respondents are aware that Respondents may consult with an attorney regarding this Agreement.
- III. Respondents were sent a copy of the complaint filed on November 18, 2008, which provided a notice of violation of the Hawaii campaign spending law.

IV. Respondents waive the opportunity to explain or otherwise respond to the notice of violation in a Commission meeting conducted pursuant to chapter 92, HRS.

V. The parties agree to the pertinent facts as follows:

1. On or around August 2008, Barbara U. Wong, Executive Director for the Commission, initiated an investigation of Respondent.
2. Committee is the candidate committee for Ku, a candidate for the House of Representatives in 2006 and 2008.

2006 Election period

3. Section 11-212, HRS, provides, in relevant part as follows:

§11-212 Preliminary reports.

(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report.

Preliminary reports shall be filed on the following dates:

(A) July thirty-first of the year of the primary election;

(B) Ten calendar days prior to each primary and initial special election; and

(C) Ten calendar days prior to a special or general election.

4. Respondents filed the second preliminary primary report for the 2006 primary election on August 28, 2008, but not on or before the September 13, 2006 due date.

5. Section 11-213, HRS, provides, in relevant part as follows:

§11-213 Final and supplemental reports. (a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the

commission on the twentieth calendar day after a primary or initial special election.

6. Respondents filed the final primary report for the 2006 primary election on August 28, 2008, but not on or before the October 13, 2006 due date.
7. Section 11-213, HRS, provides, in relevant part as follows:
 - (d) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period report with the commission on forms provided by the commission on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.
8. Respondents filed the final election report for the 2006 election on August 28, 2008, but not on or before the December 7, 2006 due date.

2008 Election period

9. Section 11-213, HRS, provides, in relevant part as follows:
 - (f) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a) or subsection (b) in the case of noncandidate committees. The first report shall be due no later than the thirty-first day after the last day of the election year.
10. The Committee reported a deficit in their disclosure reports, attributable to personal loans from Ku to the Committee.

11. Respondents did file supplemental reports required by this section on August 28, 2008, but not on or before the due dates of January 30, 2007, July 31, 2007 and January 31, 2008.
12. Section 11-212, HRS, provides, in relevant part as follows:

§11-212 Preliminary reports.
(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report. Preliminary reports shall be filed on the following dates:
 (A) July thirty-first of the year of the primary election;
 (B) Ten calendar days prior to each primary and initial special election; and
 (C) Ten calendar days prior to a special or general election.
13. Respondents filed the second preliminary primary report for the 2008 primary election on September 22, 2008, but not on or before the September 10, 2008 due date.
14. Respondents were notified by letter dated September 12, 2008 of the late report.

2010 Election period

15. Section 11-S, Act 211, Session Laws of Hawaii 2010 (“Act 211”), provides, in relevant part as follows:

11-S Time for candidate committee to file preliminary, final, and supplemental reports. (a) The candidate and treasurer of the candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file preliminary, final, and supplemental reports.
(1)The filing dates for preliminary reports are:
 (A) July 31 of the election year;

16. July 31, 2010 falls on Saturday. The due date for the first preliminary primary report in the 2010 primary election was Monday, August 2, 2010 because the due date is extended pursuant to section 11-BB of Act 211, which provides as follows:

When any reporting deadline falls on a Saturday, Sunday, or holiday designated in section 8-1, the reporting deadline shall be the next succeeding day that is not a Saturday, Sunday, or holiday.

17. Respondents did file the supplemental report required by this section on August 14, 2010, but not on or before the due date of August 2, 2010.
18. Respondents, pursuant to section 11-213.5, HRS, were required to file:
- [t]rue and accurate reports ...with the Commission on or before the due dates specified...
19. Respondents were notified by letter dated August 9, 2010 of the late report.
20. Respondents acknowledge that the above mentioned reports were not filed on or before the due dates in violation of sections 11-212, 11-213, and 11-213.5, HRS and section 11-S of Act 211.
21. Respondents did not knowingly, intentionally, or recklessly violate sections 11-212, 11-213, and 11-213.5, HRS, and section 11-S of Act 211.

VI. The Commission has made a preliminary determination that probable cause exists that Respondent committed a violation of the Hawaii campaign spending law. Respondent waives findings of fact and conclusions of law.

- VII. Respondents have a right to a contested case hearing by the Commission, pursuant to chapter 91, HRS, and waive the contested case hearing.
- VIII. Pursuant to sections 91-9(d) and 11-JJJ(b) of Act 211 the parties hereby agree to modify the proceedings and informally dispose of this matter in accordance with the terms and conditions of this Agreement.
- IX. Respondents, having voluntarily cooperated with this investigation, desire to resolve any further administrative proceedings and potential litigation by entering into this Agreement with the Commission on his own volition without any coercion or duress and with full knowledge and understanding.
- X. This Agreement, upon complete performance of the terms and conditions stated herein, has the effect of remedial or corrective action taken by Respondents pursuant to section 11-FFF of Act 211.
- XI. Settlement Terms
 - 1. As final settlement of the matter and issues in this Agreement #10-16, Respondents agree to an assessment of \$600 pursuant to section 11-JJJ(a)(1) of Act 211.
 - 2. Terms of payment of the assessment shall be by Order of the Commission.
 - 3. Respondents agree to comply with Hawaii laws on contributions and expenditures.
 - 4. It is understood that by voluntarily entering into this Agreement, Respondents intend to remedy or correct the alleged violations, but this

Agreement shall not be construed as, and does not constitute, an admission of liability or wrongdoing by Respondents.

- XII. The Commission upon its own motion or a written request of anyone filing a complaint under section 11-BBB of Act 211, may review compliance with the Agreement. If the Commission believes that the Agreement has been violated, it may institute administrative proceedings or a civil action in the Circuit Court of the First Circuit pursuant to section 11-JJJ(d) of Act 211.
- XIII. This Agreement shall become effective as of the date that all parties have signed and the Commission has approved the Agreement.
- XIV. This Agreement constitutes the entire agreement between the Commission and Respondents on the matters raised herein, and no other statement, promise, or agreement, either in writing or oral, not contained in this Agreement made by either party or by agents of either party shall be enforceable.
- XV. This Agreement, unless violated, is a complete and final settlement with respect to the violation by Respondents that is the subject of the Agreement.

FOR THE COMMISSION:

Barbara Wong, Executive Director

Date: _____

FOR THE RESPONDENT:

Tercia Ku Campaign Committee

Its: _____

Date: _____